IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 174 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALAL JANMOHMAD AALAMKHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR RC KODEKAR, APP, for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/04/2001

ORAL JUDGEMENT

Heard learned counsel for the parties.

2 The petitioner, externee, by this petition under

Article 226 of the Constitution of India, is praying for the following reliefs:-

"(A) Your Lordships be pleased to issue a writ of Habeas Corpus or any other appropriate writ, order or direction and be pleased to quash and set aside the impugned order dated 31.10.2000 passed by the respondent no.2 under section 56(1) of the Bombay Police Act, 1951, externing the petitioner for a period fo two years which has been confirmed by the respondent no.1 vide its order dated 11.1.2001 as being illegal, invalid, null and void, suffers from total non application of mind, without authority of law, against the principles of natural justice and violative of Arts. 14, 19 and 21 of the Constitution of India.

(B) Your Lordships be pleased to issue a writ of Habeas Corpus or any other appropriate writ, order or direction and be pleased to quash and set aside the order dated 23.11.2000 detaining the petitioner in jail for breach of externment order as being illegal, invalid, null and void, suffers from total non application of mind, without authority of law, against the principles of natural justice and violative of Arts. 14, 19 and 21 of the Constitution of India."

From these prayers, it is clear that this petition suffers from the defect of misjoinder of cause actions. Under the order dated 31.10.2000, respondent no.2 externed the petitioner for a period of two years from seven districts, namely, Mehsana, Patan, Gandhinagar, Sabarkantha, Banaskantha, Surenderangar, Ahmedabad City and Ahmedabad Rural. On appeal, this order of the respondent no.2 has been confirmed by respondent no.1 under the later's order dated 11.1.2001.

2 The petitioner was sent to jail under the order dated 23.11.2000 of the respondent no.2 for breach of externment order. This order is also challenged in this petition by the petitioner. The learned counsel for the petitioner submits that this petition may be considered against the order dated 23.11.2000 of respondent no.2.

3 Relying on the decision of this Court in the case

of RAMESHJI PANCHAJI THAKOR V. STATE OF GUJARAT & ORS. reported in 2000(1) GLR 171 the learned counsel for the petitioner contended that respondent no.2 has no jurisdiction to send the petitioner behind the bar for violation of externment order without his trial. It has next been contended that only on the conviction the petitioner could have been sent behind the bar and that jurisdiction rests with the Judicial Magistrate and not with respondent no.2.

4 The learned counsel for the respondents, on the other hand, is unable to show from the record that the order dated 23.11.2000 is passed after the trial of the petitioner in the matter. He is also unable to show that the Sub-Divisional Magistrate has jurisdiction to pass such an order.

5 This matter is squarely covered by the decision of this Court in the case of RAMESHJI PANCHAJI THAKOR V. STATE OF GUJARAT & ORS. (supra) and the order dated 23.11.2000 of the respondent no.2 at Annexure-E cannot be allowed to stand.

6 In the result, this petition succeeds and the same is allowed. The order dated 23.11.2000 passed by respondent no.2 detaining the petitioner in jail for breach of externment order is quashed and set aside. The petitioner is ordered to be set at liberty forthwith if not required in any other matter.

7 It is however open to the respondent no.2 to proceed in the matter against the petitioner for violation of the externment order in accordance with the law. It is open to the petitioner if he so desire to challenge the order of externment by filing a separate petition.

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